IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2204 of 2006

Amol Ashok Lad. ... Petitioner.

V/s.

Kolhapur Agricultural Produce
Market Committee and others. ... Respondents.

WITH

WRIT PETITION NO. 2205 of 2006

Sanjay Babgonda Patil. ... Petitioner.

V/s.

Kolhapur Agricultural Produce
Market Committee and others. ... Respondents.

S.M.Dharap i/b. Mrs.Anjali Helekar
for the petitioners.

M.S.Topkar for respondent No.1.

CORAM : V.C.DAGA, J.

DATED : 31st March 2006.

P.C. :

Heard learned counsel for the petitioner. Perused petitions.

Facts :

2. These petitions are directed against the common order dated 18th March, 2006 passed by the Industrial Court, Kolhapur dismissing Revision Application (ULP) Nos.78 to 79 of 2006 and, thereby confirming the common order dated 20th February, 2006 passed by the Labour Court dismissing the applications for interim relief moved by the complainants (petitioners herein) in the complaints filed under section 28 read with Items 6, 9 and 10 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act" for short).

3. The petitioner in Writ Petition No.2205/2006 viz. Mr.Sangam Patil happened to be the son of former Chairman of the Agriculture Produce Market-Committee, Kolhapur ("APMC" for short). He came to be appointed by order dated 3rd May, 2005 with effect from 1st June, 2006 for a period of six months as Clerk, (a seasonal employee) along with other three persons, the petitioner in Writ Petition No.2204/2006 is one of them. Service period of the petitioners came to be extended by subsequent orders dated 25th November, 2005 for a

further period of six months.

4. In the first week of January, 2006 the new Managing Committee of the APMC assumed office. After assuming office, new committee took a fresh stock of the workload and found that the employment of additional staff on temporary basis was not necessary. The earlier resolution No.13, whereby the APMC had resolved to grant extension of another six months to the petitioners and other two persons was reconsidered and revoked by the Managing Committee of the APMC. *A fresh resolution was adopted in the meeting held on 17th January, 2006, pursuant to which, it was resolved to terminate services of the petitioners and other two persons.*

5. It appears that smelling the adoption of the resolution dated 17th January, 2006 and apprehending termination complainants/ petitioners chose to file complaints under MRTU & PULP Act. Applications for interim reliefs were moved. Initially, ad-interim relief was granted by the Labour Cort vide its order dated 16th January, 2006. On being noticed, APMC appeared and opposed the applications for interim reliefs. After hearing the parties to the complaints, the Labour Court noticed absence of legal right in favour of the petitioners since they did not complete 240 days' continuous service in the preceding twelve months. The Labour Court also noticed that the entry of the petitioners/complainants in the service of APMC was

by back door; one of the complainants happened to be the son of former Chairman of the APMC. Thus, relying upon the Division Bench judgment of this Court in the case of *Keval Bana Gopal Mali & Ors. v. Dhule Municipal Council*, 1998 II CLR 842, the Labour Court was pleased to reject the prayers for interim relief.

6. Being aggrieved by the aforesaid rejection of interim reliefs, the petitioners herein chose to file revision applications before the Industrial Court, Kolhapur being Revision Application (ULP) Nos.78/2006 and 79/2006.

7. The Industrial Court vide its common order dated 18th March, 2006 was pleased to dismiss both revisions and confirmed the order dated 20th February, 2006 passed by the Labour Court dismissing the applications for interim relief.

8. The aforesaid orders of the Industrial Court are a subject matter of challenge in these petitions filed under Articles 226 and 227 of the Constitution.

Rival Submissions :

9. Mr.Dharap, learned counsel appearing for the petitioners submits that the impugned orders are liable to be set aside because the complainants

have made out prima facie case for grant of interim relief. He submits that once having resolved to extend services of the petitioners finding availability of the workload, it was not open for the newly elected committee to adopt another resolution, just contrary to earlier one. He tried to read political bias in the subsequently adopted resolution resolving to discontinue the services of the petitioners. That is how, he tried to establish factual malice and prayed for rule and interim relief.

10. Per contra, Mr.Topkar, learned counsel for the APMC submits that the subsequent appointment or extension of services of the petitioners itself were bad, illegal and contrary to the provisions Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (“APMC Act” for short) and Rules of 1967 framed thereunder (“APMC Rules” for short). He pressed into service sub-rule (5) of APMC Rules, which is reproduced hereinbelow:

> **100. Officers and servants of Market Committee :-**
>
> (1) ....
> (2) ....
> (3) ....
> (4) ....
>
> (5) No new post shall be created or any existing post abolished, no appointment to any post (not being a temporary or

> officiating appointment to any post for a period not exceeding six months) shall be made, and no persons in the service of a Market Committee shall be discontinued as a measure of retrenchment or economy in rank except with the previous approval of the Director.
>
> ....
>
> (Emphasis supplied)

11. Reading of the aforesaid rule would unequivocally go to show that no new post could be allowed to be created or any existing post could be allowed to be abolished without previous approval of the Director. No appointment is allowed to be made without prior approval of the Director. Similarly, no person, who is in the service of the APMC, can be discontinued as a measure of retrenchment or economy in rank except with the previous approval of the Director. This rule, thus, contemplates that a person can be appointed on temporary or officiating basis to any post for a period not exceeding six months. In this view of the matter, he submits that no extension or continuity in service could have been granted by the APMC.

12. During the course of hearing, learned counsel for the APMC submits that so far as cadre of Clerk is concerned, there are 29 sanctioned posts and all of them have been occupied. No

vacant post of Clerk is available. He further submits that so far as cadre of Watchman is concerned, 57 persons are occupying the posts and 5 posts of Watchman are vacant, which can only be filled in following regular procedure known to law. He submits, what cannot be done directly cannot be allowed to be done indirectly. He, thus, prayed for dismissal of these petitions in limine with costs.

Consideration :

13. It is needless to mention that the extension or second appointments of the petitioners are contrary to the provisions of the APMC Act and Rules framed thereunder as such extension or fresh second appointment orders cannot create any legal right in favour of the petitioners. They have no legal right. In absence of any legal right, enforcement thereof is not permissible. Prima facie; there is no case in favour of the petitioners. In this premise, it can hardly be said that the APMC has engaged in any unfair labour practices. The petitioners have suffered two adverse orders. Two Courts below have examined their cases. Both Courts, concurrently, held that second appointments or extensions in absence of prior approval of the Director of APMC are bad and illegal. This view taken is a reasonable and possible view. Impugned order cannot be said to be

perverse by any standard. The petitions are, therefore, liable to be dismissed in limine.

14. The learned counsel for the APMC has undertaken on behalf of the APMC not to appoint any person in future without floating public advertisement on any vacant post or the post which may lie vacant in future or which may be created in due course of time.

15. In result, both the petitions are dismissed in limine with no order as to costs.

16. At this stage, leaned counsel for the petitioners prayed for order directing continuation of the services of the petitioners for two weeks from today. The prayer made is rejected.

(V.C.DAGA, J.)